

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL CASE NO. 3:16-cv-00447-FDW  
(CRIMINAL CASE NO. 3:03-cr-00064-FDW)**

<b>ANTWAINE LAMAR MCCOY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b><u>O R D E R</u></b>
	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

**THIS MATTER** is before the Court on Petitioner’s “Motion to Reconsider Court’s Denial of Petitioner’s 28 U.S.C. § 2255 Motion” [Doc. 14] and Petitioner’s “Motion to Dismiss” [Doc. 18], which the Court construes as a motion to withdraw his motion to reconsider.

On January 16, 2018, this Court denied and dismissed Petitioner’s Motion to Vacate under 28 U.S.C. § 2255 for the reasons stated in the Court’s Order. [Doc. 12]. On February 8, 2018, Petitioner moved the Court to reconsider its denial of his motion to vacate. [Doc. 14]. A month later, while the motion to reconsider remained pending, Petitioner filed a notice of appeal. [Doc. 15]. On March 17, 2018, the Fourth Circuit notified the Clerk that it would treat the notice of appeal as filed as of the date this Court disposes of the motion to reconsider. [Doc. 17].

On August 27, 2019, Petitioner moved to withdraw his motion to reconsider in light of United States v. Smith, 882 F.3d 460 (4th Cir. 2018), which held that North Carolina voluntary manslaughter is a violent felony for purposes of the Armed Career Criminal Act.<sup>1</sup> [Doc. 18].

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<sup>1</sup> For reasons unclear to the Court, Petitioner’s pending motions have not appeared on the Court’s standard CM-ECF reports and, thus, have remained pending until now.

According to the Bureau of Prisons website, Petitioner was released from custody on December 7, 2021. The Court will grant Petitioner's motion to withdraw his motion to reconsider and, therefore, deny Petitioner's motion to reconsider as moot.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Petitioner's "Motion to Dismiss" [Doc. 18] is **GRANTED** and Petitioner's Motion to Reconsider [Doc. 14] is **DENIED** as moot in accordance with the terms of this Order.

The Clerk is respectfully instructed to notify the Fourth Circuit of the entry of this Order.

**IT IS SO ORDERED.**

Signed: May 10, 2024



Frank D. Whitney  
United States District Judge

